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7 UNITED STATES DISTRICT COURT  
8 WESTERN DISTRICT OF WASHINGTON  
9 AT SEATTLE

10 ROBERT JOSEPH LUMPKIN,

11 Plaintiff,

12 v.

13 DEPARTMENT OF JUSTICE,

14 Defendant.

CASE NO. C23-0368JLR

ORDER

15 Before the court are (1) *pro se* Plaintiff Robert Joseph Lumpkin’s complaint for  
16 damages (Compl. (Dkt. # 5)) and (2) Magistrate Judge Brian A. Tsuchida’s order  
17 granting Mr. Lumpkin’s application to proceed *in forma pauperis* (“IFP”) and  
18 recommending that the court review his complaint pursuant to 28 U.S.C. § 1915(e)(2)(B)  
19 (IFP Order (Dkt. # 4)). Under 28 U.S.C. § 1915(e)(2), district courts have authority to  
20 review IFP complaints and must dismiss them if “at any time” it is determined that a  
21 complaint fails to state a claim on which relief may be granted. 28 U.S.C. § 1915(e)(2);  
22 *see also id.* § 1915A(b)(1); *Lopez v. Smith*, 203 F.3d 1122, 1127 (9th Cir. 2000)

(clarifying that § 1915(e) applies to all IFP proceedings, not just those filed by prisoners). The court has considered Mr. Lumpkin’s complaint and the governing law. Being fully advised, the court DISMISSES Mr. Lumpkin’s complaint without prejudice and with leave to amend.

## II. BACKGROUND

Mr. Lumpkin files this action seeking money from Defendant the Department of Justice (the “DOJ”). (*See* Compl.) Mr. Lumpkin alleges that his “complaint” prompted the DOJ to reach a “toxic water settlement” and he is therefore owed a portion of the settlement. (*Id.* at 5.) Mr. Lumpkin does not provide any information that would allow the court or the DOJ to identify the settlement or the amount of money he believes he is owed, nor does he cite any legal authority entitling him to a portion of the alleged settlement. (*See generally id.*) Mr. Lumpkin also states that his complaint is “for a civil case alleging that the defendant owes the plaintiff a sum of money.” (*Id.* at 1.)

## III. ANALYSIS

Title 28 U.S.C. § 1915(e)(2)(B) authorizes a district court to dismiss a claim filed IFP “at any time” if it determines (1) the action is frivolous or malicious; (2) the action fails to state a claim; or (3) the action seeks relief from a defendant who is immune from such relief. *See* 28 U.S.C. § 1915(e)(2)(B). Dismissal for failure to state a claim is proper when there is either a “lack of a cognizable legal theory or the absence of sufficient facts alleged.” *Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990). Because Mr. Lumpkin is a *pro se* plaintiff, the court must construe his pleadings liberally. *See McGuckin v. Smith*, 974 F.2d 1050, 1055 (9th Cir. 1992). Nonetheless, his

1 complaint must still contain factual allegations “enough to raise a right to relief above the  
2 speculative level.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). The court  
3 need not accept as true a legal conclusion presented as a factual allegation. *Ashcroft v.*  
4 *Iqbal*, 556 U.S. 662, 678 (2009). Although the pleading standard announced by Federal  
5 Rule of Civil Procedure 8 does not require “detailed factual allegations,” it demands more  
6 than “an unadorned, the-defendant-unlawfully-harmed-me accusation.” *Id.* (citing  
7 *Twombly*, 550 U.S. at 555); *see* Fed. R. Civ. P. 8(a) (requiring a pleading to  
8 “contain . . . a short and plain statement of the grounds for the court’s jurisdiction,” and  
9 “a short and plain statement of the claim showing that the pleader is entitled to relief”).

10 Here, Mr. Lumpkin’s complaint is subject to dismissal because he fails to state a  
11 claim for relief. *See Twombly*, 550 U.S. at 555; Fed. R. Civ. P. 8(a). Mr. Lumpkin does  
12 not identify any legal authority for his entitlement to money or any facts to support his  
13 right to recover. (*See generally* Compl.) Mr. Lumpkin also fails to identify a basis for  
14 this court’s jurisdiction over the alleged controversy. (*Id.* at 3-4 (leaving blank the  
15 sections of the form regarding jurisdiction).) This court cannot entertain claims over  
16 which it lacks subject matter jurisdiction. *See, e.g., Emiabata v. Bank of N.Y. Mellon Tr.*  
17 *Co. NA/J Morgan Chase (SLS)*, No. 17-cv-1302JLR, 2017 WL 4838840, at \*1 (W.D.  
18 Wash. Oct. 3, 2017) (dismissing IFP complaint under 28 U.S.C. § 1915(e)(2)(B) for lack  
19 of subject matter jurisdiction); *see also* Fed. R. Civ. P. 12(h)(3) (“If the court determines  
20 at any time that it lacks subject-matter jurisdiction, the court must dismiss the action.”).  
21 Finally, the court is also concerned that Mr. Lumpkin’s complaint against the DOJ is  
22 barred by sovereign immunity. The United States, as a sovereign, may not be sued

1 without its consent, and the terms of its consent define the court's jurisdiction. *United*  
2 *States v. Dalm*, 494 U.S. 596, 608 (1990). A waiver of the United States' sovereign  
3 immunity must be unequivocally expressed in statutory text. *Lane v. Pena*, 518 U.S. 187,  
4 192 (1996). Mr. Lumpkin does not identify any such express waiver of sovereign  
5 immunity that would entitle him to collect compensation from the DOJ. (*See generally*  
6 *Compl.*)

7 When a court dismisses a *pro se* plaintiff's complaint, it must give the plaintiff  
8 leave to amend "[u]nless it is absolutely clear that no amendment can cure the defect" in  
9 the complaint. *Lucas v. Dep't of Corr.*, 66 F.3d 245, 248 (9th Cir. 1995). In light of the  
10 Ninth Circuit's liberal policy favoring amendment, the court GRANTS Mr. Lumpkin  
11 leave to file an amended complaint. If he does so, he must include short, plain statements  
12 setting forth (1) the constitutional or statutory provision he believes entitles him to relief,  
13 (2) the basis for this court's subject matter jurisdiction; (3) factual allegations supporting  
14 his claim; and (4) the express waiver of sovereign immunity that allows him to recover  
15 against the United States. Mr. Lumpkin shall file his amended complaint, if any, no later  
16 than **March 31, 2023**. If Mr. Lumpkin fails to timely comply with this order or fails to  
17 file an amended complaint that remedies the deficiencies discussed in this order, the court  
18 will dismiss his complaint without leave to amend.

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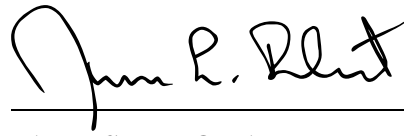
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1 **IV. CONCLUSION**

2 For the foregoing reasons, the court DISMISSES Mr. Lumpkin's complaint (Dkt.  
3 # 5) without prejudice and with leave to file an amended complaint that corrects the  
4 deficiencies identified herein by no later than **March 31, 2023**.

5 Dated this 15th day of March, 2023.

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8 JAMES L. ROBART  
9 United States District Judge  
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